IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

WRIT PETITION NO : 6930 of 1994

Between:

1. Mirza Mohd. Baig, S/o. Shafullah Baigh,
2. G.G. Mallaiah S/o. Mallaiah,
3. B. Satyanarayana, S/o. B. Tirupataiah,

all working as Heavy Vehicle Drivers in Kothagudem School

of Mines, Osmania University, Kothagudem -507 101

..... PETITIONERS

AND

1 Osmania University, rep. by its Registrar, Hyderabad.
2 Principal, Kothagudem School of Mines,

O.U. Kothagudem 507 101

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction especially one in the nature of mandamus; (i) declaring the impugned proceedings NO: 1266/1/87/Accts/Gen.I dated 14-2-1994 of the Registrar, Osmania University, as illegal, arbitrary and unconstitutional and set aside the same; (ii) declare that the petitioners are entitled to be paid the scale of Heavy Vehicle Drivers w.e.f. 1.10.1980; (iii) direct the respondents to pay the difference of amount by granting the Heavy Vehicle Drivers scale to the petitioners from 1.10.1980; (iv) direct the respondents to pay the interest @ 18% per annum on the amounts due to the petitioners; and (v) to grant such other relief or reliefs.

Counsel for the Petitioner: MR.V.JOGAIAH SARMA

Counsel for the Respondent No.1: MR.DEEPAK BHATTACHARJEE

(S.C. FOR O.U.)

The Court made the following

ORDER:

Heard the learned counsel for the petitioners as also the learned counsel for the respondent-University.

The grievance of the petitioners, three in number, is that they have been illegally denied the scale of pay applicable to the heavy vehicle drivers. The respondent-University granted the pay scales applicable to the post of heavy vehicle drivers with effect from 01-05-1992 instead of 1978 (the date of joining).
A claim is therefore made for payment of the difference in the pay scale with effect from 1978 to 1991.

The further grievance of the petitioner is with respect to the letter dated 14-02-1994 of the Registrar of the respondent-University, whereby the Principal of the Kothagudem School of Mines, where the petitioners are rendering service, was informed that the award of higher pay scale to the drivers working at the said school of mines on par with heavy vehicle drivers working in the Government is not feasible.

The claim of the petitioners is resisted by the respondent-University *firstly* on the ground that there is no post of heavy vehicle drivers in the respondent-University. There is only one scale of pay for drivers and that the petitioners were granted the same when revised pay scales (RPS 1986) were extended to cover non teaching staff of the University vide G.O.Ms.No.78, dated 30-03-1998. As per the said G.O., the drivers working in the University are allowed pay scale of Rs.810-1420 and the

same was granted to the petitioners.

With respect to the awarding of higher pay scale of Rs.950-1670 to the petitioners with effect from 01-05-1992,
the stand of the respondent is that same was granted with a view to resolve the crisis, which had arisen on account of strike. The University awarded the said pay scale of Rs.950-1670 with effect from 01-05-1992 subject to recovery of excess amount paid in the scale in the event of the Government's rejection of the proposal pending with the Government in that regard. The said decision was taken at the Board of Management meeting held on 08-05-1992. The petitioners gave an undertaking that in the event the Government does not give concurrence for the award of pay scale of Rs.950-1670, petitioners shall refund the excess money drawn by them by virtue of the temporary refixation of pay scale of Rs.950-1670.

Learned counsel for respective parties have reiterated the respective contentions, as raised in the pleadings filed respectively by the parties.

It was urged on behalf of the petitioners by the learned counsel that as admittedly the petitioners are rendering services of driving heavy vehicles and also having heavy vehicle licence they are entitled to be paid the scale of pay applicable to the heavy vehicle drivers. It was further urged that as they have been granted the aforesaid scale being the higher pay scale of Rs.950-1670 with effect from 01-05-1992, they should have been granted the said scale of pay from the date of initial appointment i.e., from the year 1978 being the date of their joining in service.

From the contentions as above, it would be apparent that before the scale as claimed by them can be granted petitioners should establish that there is a post of heavy vehicle driver in the respondent-University. The question of payment of the scale claimed by them is depending upon the existence of such post.

Admittedly, petitioners were appointed as drivers and were paid the scale of pay applicable to the drivers. There is no post of heavy vehicle driver in the respondent-University.
Under peculiar circumstances, awaiting sanction of the Government, higher scale of pay as applicable to the heavy vehicle driver i.e., Rs.950-1670 was given by the University to the petitioners. On this aspect of the matter, learned counsel for the respondent-University has relied upon Section 49 of the A.P. Universities Act, 1991,

relevant provision has been extracted in the additional counter affidavit and for the sake of convenience is extracted hereunder:

> "The University shall not without the prior approval of the Government divert earmarked funds for other purposes or upgrade any post or revise the scales of payoff its staff or implement any scheme which involves any matching contribution from the Government or create a post or posts resulting in recurring liability on the Government either immediately or in future."
>
> (emphasis supplied)

From a bare reading of the above provision, it is apparent that University cannot revise the scales of pay of its staff without prior approval of the Government. As in the case on hand, petitioners have failed to establish that there was any such post of heavy vehicle driver in the University, the relief claimed in the writ petition cannot be granted to them unless a post is either created or the revised scale of pay is agreed to by the Government. In the instant case, the principle of equal pay for equal work is not attracted. There is no corresponding post of heavy vehicle driver in the respondent University and for applicability of the said principle comparison with the drivers working in the Government is neither appropriate nor permissible. In the circumstances, the stand of the respondent-University that petitioners are not entitled to the higher scale of pay unless so sanctioned by the Government has to be upheld. The impugned letter dated 14-02-1994 does not suffer from any legal infirmity.

Petitioners accordingly have failed to establish that they are entitled to higher scale of pay. Therefore, the instant writ petition is liable to be and is accordingly dismissed. No order as to costs.

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M.H.S. ANSARI, J

24th February, 2005

lsn/ars

ASSISTANT REGISTRAR

To

1 The Registrar, Osmania University, Hyderabad.
2 The Principal, Kothagudem School of Mines,

Osmania University, Kothagudem-507 101

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